

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-CV-11542-RGS

CHARLES BRETT, BUILDING
INSPECTOR OF TOWN OF HAMILTON

v.

IRINA V. TEMKINA

ORDER ON DEFENDANT'S
MOTION TO DISMISS

September 7, 2005

STEARNS, D.J.

Defendant Irina Temkina seeks a dismissal of this action after having caused it to be removed from the Massachusetts Superior Court. After review of the Verified Complaint, the attached exhibits, and Inspector Brett's Affidavit, the court finds that the jurisdictional requirements of 28 U.S.C. § 1332 have been met and that Brett has pled "a cause of action upon which relief can be granted." Temkina's motion to dismiss challenges the factual assertions of the Complaint. Her principal contention is that the alleged building code violations cited by Brett in the Complaint either never existed or have since been remedied.¹ The motion misapprehends the correct legal standard. In a Rule 12(b)(6) context, the court must "accept the allegations of the complaint as true, and if, under any theory, the allegations are sufficient to state a cause of action in accordance with the law, [it] must deny the motion to dismiss." Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st

¹If that were apparent from the face of the Complaint, the removal would have been improper as the \$75,000 amount in controversy threshold for diversity jurisdiction would have been lacking.

Cir. 1994). Accordingly, Temkina's motion to dismiss is DENIED.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE